JD-40-06
Schaumburg, IL

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

PARROTKEAT ENTERPRISES, INC.,
d/b/a BG ELECTRONICS,

and Case 13-CA-42950

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL–CIO,
LOCAL UNION NO. 134.

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DECISION

Statement of the Case

DAVID I. GOLDMAN, Administrative Law Judge. The General Counsel issued a complaint in this case January 31, 2006, against Parrotkeat Enterprises, Inc., d/b/a B-G Electronics (B-G) based on a charge filed by the International Brotherhood of Electrical Workers, AFL–CIO, Local Union No. 134 (Local 134 or Union) October 21, 2005, and amended November 7, 2005, and again on January 20, 2006.

The complaint alleges that B-G warned, suspended, discontinued cell phone service for, and discharged employee Bryan Stacey for reasons violative of Section 8(a)(1) and (3) of the National Labor Relations Act (Act), namely his effort to organize a union among the B-G technicians. The complaint also alleges that the discharge was in retaliation for Stacey's testimony at a Board representation hearing and, therefore, was violative of Section 8(a)(4) of the Act. Finally, the complaint alleges an owner of B-G violated Section 8(a)(1) of the Act by telling employees it would be futile to seek union representation, and by threatening to close the business and take other unspecified reprisals if employees chose union representation. B-G filed a timely answer to the complaint denying that it violated the Act in any way.

This case was tried in Chicago, Illinois, on April 3 and 4, 2006. Counsel for General Counsel and counsel for Respondent filed briefs in support of their positions on May 9, 2006. On the entire record, including my observation of the demeanor of the witnesses and other indicia of credibility, and after considering the briefs filed by the parties, I make the following findings of fact, conclusions of law, and recommendations.

I. Jurisdiction

Respondent, a corporation, installs, and maintains audio, video, and wireless communication systems for commercial entities from its facility in Schaumburg, Illinois, where it annually provides services valued in excess of $50,000 to various business enterprises that are directly engaged in interstate commerce. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. At the hearing, the parties stipulated and I further find that Charging Party is a labor organization within the meaning of Section 2(5) of the Act.

II. Facts

a. Background

Louis Castiello and Thomas Keating purchased B-G on or about July 1, 2005.[1] Since commencing operations under Keating and Castiello, B-G has been located at 625 Estes Avenue in Schaumburg, Illinois. B-G shares the Estes Avenue premises with two other businesses owned and operated by Castiello: Industrial Kitchen Parts Corporation and Repair Masters Incorporated. Repair Masters has operated businesses under several assumed names including RM Services, RMES, M&M Sound, and Emanon Sound. At least some of these businesses are treated as divisions, with some separation of accounting.[2] As far as can be discerned from the record, Castiello is the only owner of Repair Masters and Industrial Kitchen Parts. Castiello owns 49 percent of B-G. Keating, who moved from California to operate B-G, owns 51 percent of B-G and is its President.

Bryan Stacey was employed by B-G from the commencement of operations at Estes Avenue in July until his discharge on October 28. Stacey has long history with Keating and Castiello. From October 1996 until July 2005, Stacey worked at Estes Avenue as the technical services director for Repair Masters. He was the first employee of Repair Masters and performed nearly the entire range of work (with the exception of accounting). Keating, who knew Stacey a lot better than he knew Castiello before he purchased B-G, met Stacey and Castiello over 11 years ago because Emanon Sound (one of the Repair Masters businesses) was a customer of a company for which Keating worked.

Stacey was the proverbial (and literally the) employee who thought he owned the company. He testified that he owned 25 percent of Emanon Sound based on an oral "gentleman's agreement" entered into with Castiello at Stacey's dining room table. That agreement "went away" later, when Castiello, in Stacey's view, did not "hold up his word" and informed Stacey that he didn't own any part of it. This case does not require me to decide Stacey's ownership status in Emanon or Repair Masters. But Stacey's view that he owned part of Emanon Sound with Castiello is illustrative of the fact that Stacey's relationship with Castiello was not the typical employer/employee relationship. Stacey was central to the operation of the business. He and Castiello were friends, and Castiello knew Stacey's family "very well." For his part, Keating agreed (Tr. 302) that at an earlier Board representation hearing he testified "that

[1] All dates are in 2005 unless otherwise indicated.

[2] At the hearing, witnesses referred to Repair Masters businesses by various names, sometimes using them interchangeably.

the primary reason why [he] purchased B-G and hired Mr. Stacey was because of his experience and reputation in the industry."

Although—or maybe because—they were so close, Castiello and Stacey's relationship at Repair Masters was marked by periodic work-related arguments, which included the use of profanity by Stacey. This was never a cause for discipline or reprimand of Stacey. According to Stacey there was an "understanding" that he and Castiello would argue for the betterment of the company:

> it wasn't an argument, per se. It was an argument because it was for the better of the company. Sometimes we'd argue which way was better. Which way was wrong, which way was right. It was always in the end of where it was going to be and what was going to make it better. And we got into some good ones.

Stacey testified that these arguments were more frequent in the initial years after the company began in 1996 but had decreased in recent years based on medical advice that he needed to avoid such stress. Despite these arguments, Stacey explained when they finished arguing and walked out of work "the friendship was still there."[3]

Keating and Castiello purchased B-G with the understanding that the business would be moved into the Repair Masters facility and that Stacey would be the top technician (Castiello came up with the name technical services director for Stacey's position). Castiello testified that he told Stacey "that it was going to be the best move that ever happened in his entire life because Tom [Keating] is a phenomenal salesman and with my business background, we could do nothing but, finally, make money. . . . [T]he prospect of Brian [Stacey] being a part of that, on the ground floor, would be nothing but lucrative for him down the line because we would finally be in a position to pay him money that he thought he was worth."

b. B-G begins operations under Keating

Keating moved to the Chicago area and began work fulltime at B-G on July 28. The business began operation with the existing B-G customers (developed while the company was under prior ownership), as well as Emanon Sound customers. (Emanon Sound was "folded into" B-G upon Keating and Castiello's assumption of B-G.) Stacey became a B-G employee on July 1, although he was paid by Repair Masters and not B-G for approximately one month thereafter. Along with Stacey, B-G employed two other technicians, Victor Tario and Joe Myles. In preparing for Keating's arrival Stacey vacated the portion of the warehouse where he maintained his office so that Keating could use the area for an office.

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[3]At the hearing none of Respondent's witnesses, including Castiello, challenged Stacey's account of their working relationship and I credit this testimony. I note here that I found Stacey's testimonial demeanor to be honest and forthright, and at appropriate points in this decision, I have generally credited his testimony. This by no means is intended to suggest that Stacey was the perfect employee. His confrontational style, his disregard for formalities, and his belief that he knew more than anyone else about how the business should operate, were easy to glean from his and others testimony and from his demeanor. There were incidents described in testimony where he seemed to miscomprehend the effect of his actions on others. His perception of some events was skewed by his outlook. Yet, I believe he honestly testified to the events as they occurred as he perceived them. I would note also that, in fact, there are only a few instances where disputed factual assertions required credibility resolutions. Much of the key testimony (and this applies not only to Stacey's testimony) was not contradicted, and I have tended to credit undisputed testimony unless it seemed untrustworthy on its face.

On August 5, just over one week after Keating began working at B-G, Stacey and Castiello got into an argument about "loops" that Stacey was building in the warehouse.[4] The argument became heated and, as Castiello put it, "one thing led to another." Castiello was shouting and Stacey was screaming. Castiello testified that Stacey "told me to go fuck myself." Stacey admitted that he "may have done" this as "I was steamed." For Stacey, this argument was of a kind that he and Castiello had had many times in the past. Castiello did not take it so lightly, particularly because he had been cursed by Stacey within earshot of others. A follow-up discussion on the subject of making loops occurred on Monday, but was not as heated. In this meeting Castiello told Stacey that but for the fact that Stacey's son (who was working for the summer at the facility) "was standing in earshot of what happened I said I would have personally thrown you out of my office and you would never work or see me again."[5]

Keating overheard the argument and on August 10, confronted Stacey with a letter of reprimand that derided Stacey generally for his conduct in the few weeks since Keating arrived, a problem "capped off" by the incident on August 5. The letter warned that "any repeat of [the August 5 incident] will result in your immediate and sudden dismissal from the employ of Parrotkeat Enterprises." (GC Exh. 1). Tough as the letter was, Keating's oral explanation to Stacey was not without praise for Stacey:

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[4]In B-G's industry a "loop" is a wire built to create a magnetic field and placed in the ground below a drive-thru menu board at a fast-food restaurant. When a customer pulls up to the menu board the magnetic field interrupts the circuit and alerts the restaurant employees that a drive-thru customer is waiting.

[5]Although I accept that Castiello was angered by this incident, I doubt some of his testimony regarding his reaction. Castiello testified that when he saw Stacey's wife at the office on August 12, he initiated a conversation with her after bringing her into his office in which he told her that he was so upset by Stacey's cursing of him that "I went to Tom [Keating] today because I want Bryan fired." According to Castiello, Stacey's wife cried and pleaded for Castiello to give Stacy another chance.

I don't doubt that Stacey's wife came to the facility or even that Castiello threatened Stacey's job for the purpose of enlisting Stacey's wife to make sure that Stacey did not repeat his outburst. But as an evidentiary matter, Castiello's account of his conversation with Stacey's wife is hearsay to the extent offered for the truth of the matter asserted. The matter asserted that I doubt is that Castiello went to Keating and sought Stacey's discharge. Putting aside my suspicion that Keating would have discharged Stacey if Castiello had wanted him to, I cannot believe that Keating would not have mentioned this in his extended testimony about the written warning he gave Stacey because of the incident. He did not. Other than Castiello's testimony that he told Stacey's wife that he attempted to have Keating discharge Stacey over the August 5 incident, there is no evidence supporting that. I do not accept it. Without diminishing the incident, I note that there was a tendency on the part of some of Respondent's witnesses to retrospectively build this incident into a closer call for Stacey's employment than it was, perhaps believing that to do so helps justify Stacey's subsequent discharge. An example of this was Office Manager Janice Traviss' unsolicited interjection into her testimony that while listening to this argument between Stacey and Castiello "I was afraid he was going to be fired" (Tr. 336) and that Stacey's wife "was upset when she came in" and "appeared to be grateful to Lou whenever she left." (Tr. 337). But according to Castiello, Stacey's wife came in just to drop Stacey's son off for work—she became upset only after Castiello called her into his office and told her that Stacey could lose his job.

> I informed Mr. Stacey of two things, first being that this behavior was totally and completely unacceptable, it showed a tremendous lack of professionalism and it would no longer be tolerated. B-G was a team, it was a new company, I didn't need any division in the company. The other thing that I told Mr. Stacey was the fact that Mr. Stacey was considered to be a very valuable employee of B-G Electronics, and I reminded Mr. Stacey that when I thought about purchasing B-G Electronics he was the first person I called, so I depended upon him.[6]

At the same time that Keating gave Stacey the memo regarding the August 5 incident, he also gave Stacey a memo (GC Exh. 2) dated August 10, that accused Stacey of removing and "converting" company property. The letter demanded the return of all such property within 24 hours. Again, the memo was written tough, but Stacey's uncontradicted account of this memo was that it "was just a very polite thing" that he told Keating he had "no problems with." In clearing out his office for Keating, Stacey had packed up the entire office, "because I owned all the stuff in my office" and moved it to his garage at home. Keating was concerned that some of it could have been company property. Stacey brought everything back so it could be sorted through but there was no followup at any point on this by anyone at B-G.[7]

Obviously, by August 10, the relationship between B-G's owners and their chief technician was not as smooth as either had hoped. However, the record reveals no further arguments. Yet there was still tension over Stacey's role and status. Sometime in September Keating was angered when a B-G customer—the owner of a Dunkin' Donuts shop that B-G serviced—referred to Stacey as the owner of B-G. The Dunkin' Donuts owner told Keating that Stacey had said that he owned B-G. Stacey contended then (and contended at trial) that in July, when the changeover to B-G was in process, he had simply told the Dunkin' Donuts owner that he was an owner of Emanon Sound, not of B-G. Keating met with Stacey in his office where he gave him a verbal warning and reminded Stacey that "I was the owner and President of B-G Electronics, Mr. Bryan Stacey was an employee of B-G Electronics, and if he felt like calling himself the owner of B-G Electronics I would be more than happy to accept a $200,000 cashiers check with my name on it so he could have that privilege." Keating testified that two days later Stacey's wife was at B-G and Keating told her about the incident and told her that Stacey was "very, very close to termination." Keating testified that in response, Stacey's wife became very upset and urged Keating to call her if he was having any more problems with Stacey. She provided Keating with her cell phone number and Keating promised to call her if he had more problems with Stacey. However, according to Keating, Stacey's behavior "leveled off" and there was no need to call her.

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[6]Stacey denied that this was a "warning" letter, "per se." He characterized it as a notification of a change in management style, from Castiello's "colorful" and volatile style to Keating's mild mannered approach. Stacey was right that the management style was changing. But of course, this notice was a disciplinary warning. Especially in the first few weeks of B-G, Stacey could not accept that he was being disciplined for an argument that, in his view, involved a debate over a matter important to the business: how loops should be made. If by August 5 he no longer thought he was an owner of the business, he still was sure that he knew, and probably believed he cared, more about the operations of the business than anyone. But with Keating's arrival, the business and Stacey's role in it was rapidly changing.

[7]In their testimony, neither Keating, nor Castiello, nor any witness, with the exception of Stacey, made any reference to this memo or the reasons it was issued. I credit Stacey's uncontradicted account.

c. Timesheets

Beginning in August, B-G instituted a requirement that its three technicians (Stacey, Tario, and Myles) fill in daily time sheets recording the job they were on, the time spent, and the odometer readings on their vehicles. Once the policy was fully in place, both pay and mileage reimbursement were based on the timesheets submitted by the technicians. Technicians used their privately owned vehicles to travel to and from service jobs. In determining the route they would use to get from job to job, technicians relied on their own "common sense" rather than any specific instructions on how to get around.

The timesheets were collected weekly by Office Manager Traviss. In addition to collecting the timesheets, Traviss collected paperwork that technicians prepared for each job performed for a customer. The paperwork was used by Traviss as the basis for billing customers for the work done by a technician. Traviss reviewed the time sheets, compared them to the job order log she kept listing all of the jobs to be performed by technicians, and would make sure there was work order paper for each job listed on the timesheets. If the technician failed to supply the back up paper or to list any other information Traviss would contact the technician and push them to supply it. According to Traviss "a lot of times" technicians would fail to properly complete the timesheets and she would call them and question them and tell them she needed the missing information. Although technicians were told that they would forfeit pay for listed jobs where missing information prevented the company from billing customers, in fact, employees always got paid, even if some information was never supplied. There was no instance of a technician being disciplined for failing to complete a timesheet or for failing to provide back up information. Traviss would contact the technician and demand the missing information, but this was not discipline, indeed, as Traviss explained it was more like "begging" or "pleading" on her part. Perhaps Stacey was worse than the other two technicians in submitting his timesheets in a timely and complete manner, but clearly Traviss had to remind and "beg" other technicians as well.[8]

The timesheets for the week were supposed to be turned in every week but absolutely needed to be in every other Monday so that the data could be used for calculating the employee payroll. Traviss would forward the completed and reviewed time sheets to Castiello who would use them in preparing the payroll. Castiello would input the data from the timesheets into a computer program that he and Todd Martin—the office manager for RMES—developed for use at RMES in 2002. This would include hours worked and mileage. This program generated a spreadsheet for each employee that took the information from the time sheets and then automatically calculated hours worked for the two week payroll period and mileage reimbursement at 38 cents per mile. Other reimbursements such as parts and gas were also listed on the form and presumably would be listed on the spreadsheet when applicable. Employees received a copy of the spreadsheet with their paycheck which enabled them to raise

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[8] I note that Traviss was intent on disparaging Stacey, even without a pending question:

> Q. And what happens if they don't complete it? These [time sheet] forms?
> A. They don't a lot of the times and that's when I call them and I question them and I say, you know, I've got to have this paperwork.
> Sometimes I get it, most of the time I have it all. Bryan was a difficult person to deal with, he didn't feel that he should have to --
> MR. CLEVELAND: Objection, your Honor. Could you strike that?
> THE WITNESS: I'm sorry.
> (Tr. 323-324).

(or explain) discrepancies. The computer program also automatically deducted from reimbursable mileage the distance from the individual employee's home to the shop, and back, as that distance was not reimbursed each day.

The spreadsheet program was designed to flag common errors that might suggest a problem in the way the timesheet had been completed. For instance, significant changes in mileage day to day, beyond what was accounted for by the work performed, triggered an error flag. Of course, as employees used their personal vehicles, this could have meant not that there was a mistake in inputting mileage, but simply that the employee used the vehicle for personal use for an extended period after work, or on a day off. In that case, Castiello overrode the error code and the computer program calculated the proper amount owed to the employee for mileage reimbursement. Generally when an error code appeared, Castiello would check with Traviss, Keating, and/or the technician and determine the cause of the error. Sometimes it was the result of an inversion of numbers by the technician filling out the timesheets, or by Castiello making a mistake when he manually input data from the timesheet into the program. The program was generated every two weeks as part of the payroll process. Thus, the timesheets and mileage discrepancies were reviewed regularly by Castiello, every two weeks.

Stacey's mileage reimbursements and hours worked were repeatedly reduced, nearly every paycheck, from what he submitted. Stacey raised the issue with Keating, who said he would look into it, but Keating did not get back to Stacey on it. Castiello testified that bi-weekly excel sheets generated for Stacey revealed lots of errors. This caused him to frequently review Stacey's time sheets. In his regular review of Stacey's timesheets Castiello often wrote notes or comments on the timesheets, especially in August. Castiello raised concerns with Stacy regarding his hours, mileage, and timesheets and talked with Stacey a few times about errors or discrepancies that he found. Castiello would do try to do this before the payroll was paid for any given pay period but because Stacey frequently turned in his time sheets just in time for payroll, Castiello often wound up talking to him after Stacey had been paid. The result was that Stacey's pay was continually less than what he had submitted in his time sheets. Castiello testified that in one instance in early to mid September he talked with Stacey about listing travel time as an hour and a half for travel from Schaumburg to Arlington Heights. Castiello testified that at that time he told Stacey that "[y]ou're not going to BS me" and that Stacey replied by insisting that "there's more than one way to get to a job." There was never any discipline meted out to any technician—excluding Stacey's October 28 discharge—for errors or discrepancies on the time sheets. However, Keating testified that Stacey was changed from salaried to hourly at the end of August, which was made effective upon his return from vacation after Labor Day. Keating testified that this change was made because Stacey was not turning in his paperwork on a timely or complete basis and that there was some reason to believe "that everything just wasn't meshing with what he was putting together."

d. union activity

Stacey's wife, Marianne Stacey, initially contacted Local 134 Business Agent Robert Parrilli in mid to late September. Stacey also talked with Parrilli by telephone during this period. Parrilli explained to Stacey (and Marianne) that the Union would be interested in representing the B-G technicians and he explained some of the opportunities for enhanced training and education that would be available through union programs. Parrilli arranged a September 28 meeting at a local restaurant to discuss union representation for the three B-G technicians.

Stacey and Technician Joe Myles attended the meeting. The third B-G technician, Vic Tario, could not attend because his wife was ill. At the meeting various aspects of union

representation were discussed, including job opportunities that union representation might open for B-G. A decision was made at the meeting that Parrilli should contact Keating and explain the benefits of being part of the union and see if Keating would be receptive to recognizing and working with the Union. While they wanted Parrilli to raise the matter with Keating (for the purpose of securing voluntary recognition), at the same time Stacey and Myles thought that a representation petition should be filed as soon as possible. Stacey and Myles signed authorization cards at the meeting and Stacey took one for Tario to sign, which he gave to him at work. Parrilli misplaced the cards and had to send new ones to Stacey so that he could obtain additional cards from the employees. Stacey solicited new cards from Myles and Tario.[9] Parrilli received the new cards on or about October 10.[10]

With the new cards in hand, Parrilli telephoned Keating on or about October 10. Parrilli received a return call from Keating the next day. They had a 10 to 15 minute conversation with Keating in which he "brought it to [Keating's] attention that there was an interest in Local 134 and working with B-G Electronic." Parrilli discussed how the Union could "expand[ ] the work that they do through the networking of over 800 contractors" and suggested that he and Keating meet and discuss representation. Parrilli described the discussion as cordial, but that it was clear that Keating had no interest in B-G "ever becoming union."[11]

After the call, Parrilli understood that B-G was not going to voluntarily recognize the Union and he filed a representation petition with the Board's regional office on October 14. The petition along with a notice of a representation hearing was faxed to Keating at B-G that day. They were also sent to Keating by certified mail, and signed for and received October 18. Jennifer Stephens, a clerical employee of Repair Masters who does work for all three

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[9]When he got the second card from Tario, Tario joked with Stacey that he looked like "Norma Rae." Stacey replied, "yeah, they can't touch me now."

[10]Tario testified that he received an authorization card from Stacey at work and mailed it to Parrilli. Parrilli testified that he did not receive this card. I don't know whether Parilli lost or did not receive Tario's first card, but I credit Tario's testimony that he signed and sent one in. In his testimony he was able to relate his first card signing to conversations with Parilli, and, as discussed infra, it was the signing of this first card that prompted him to go to Keating to talk about the Union. Tario distinctly recalled signing a second card after Stacey informed him that Parrilli had lost the initial cards.

[11]Keating denied talking to Parrilli ("[o]utside of Mr. Parrilli's voice mail"), but admitted receiving a phone message from IBEW Local 134 and admitted calling Parrilli's voice mail. I credit Parrilli's testimony. He appeared to me to be accurately and honestly recalling a specific conversation he had with Keating. He described Keating as cordial but not interested in union representation, descriptions consistent with other indicia in the record. Parrilli's testimony is plausible too, as the testimony of both Stacey and Myles was that at the union meeting Parrilli said he would be contacting B-G management to explain the benefits to the company of union representation and Parrilli hoped to secure voluntary recognition from B-G. The filing of the representation petition was the back up plan. Tario also testified that after the Union meeting (which he did not attend), Stacey told him that Parrilli was going to call Keating and Castiello, and Parrilli also told Tario this when Tario called him to discuss questions he had regarding the Union. Keating was a less impressive witness. At times his answers were tentative, and at other times certain but terse as if reflecting preparation rather than simply answering the questions posed. I believe the telephone conversation between Keating and Parrilli occurred.

companies housed at 625 Estes Avenue, signed for the petition and testified that she would have given it to Keating the same day she signed for it.

On October 21, the Union provided B-G with a letter notifying B-G that Stacey was working with the Union to organize B-G. A hearing on the representation case was conducted October 27. Stacey testified, as did Keating, Castiello, and Tario. At the hearing the sole issue was B-G's contention that Stacey was a supervisory employee and therefore should be excluded from the petitioned-for bargaining unit of technician employees.[12]

e. Tario's conversation with Keating and Castiello about the union

As discussed, supra, after the union meeting with Parrilli, Stacey provided Tario with an authorization card. Tario signed it and mailed it to Parrilli. The day after he signed the card Tario went to B-G management and told them "that Bryan [Stacey] was bringing, you know, trying to attempt to bring the union into our shop." First Tario told his immediate supervisor Traviss and then he went into Keating's office to tell him. In this discussion, Tario explained the advantages in terms of business opportunities that he believed the Union would provide.

Keating appeared "open" to the idea. Tario began discussing the issue with Keating and in the middle of the conversation Castiello entered the office, and Tario brought Castiello up to speed on what they had been talking about and explained that he had signed an authorization card. Castiello's response was "you signed that fucking thing ?" and Tario told him he had. Tario explained, as he had to Keating, that he signed the card because he wanted to be "kept in the loop" and that Parrilli had promised to bring Keating and Castiello information about the advantages to the business of having a union-represented workforce. Castiello "scoffed at the idea." Tario could not remember Castiello's precise words, but summarized Castiello's comments as follows:

> with the pricing structure and the way that we deal with our, the clients that we have now, to change that pricing structure would put us right out of the, you know, right out of the ball game, you know. It would, it would be cost prohibitive and we would probably lose the accounts and we might have to close down.

Tario testified that Keating also expressed skepticism, suggesting that B-G might not be able to "handle the [customer] accounts" because of the "pricing structure of the union." Tario testified that Keating and Castiello did not talk about anything "having to do with the actual, you know, pricing. Just vague generalities, you know, can we afford this, can we afford that? No pricing structures at all."[13]

f. Myles' conversation with Keating and Castiello about the union and Stacey

[12]In a December 2 Decision, the Board's Region 13 Regional Director ruled that B-G's Director of Technical Services, and Stacey in particular, shared a community of interest with the 2 technicians and should be included in the technician unit petitioned for by the Union.

[13]I credit Tario's account of the conversation, which was not disputed.

In mid-October, Myles was called into Keating's office at the start of a work day. Keating and Castiello were there. After discussing pending jobs, Castiello asked Myles, "what about this union bullshit that's going on." Myles said, "what do you mean by that?" Castiello responded, "I just was curious because, you know, I've talked to some of my clients and they're not interested in paying union fees for the services that we offer." Myles told Castiello that with the Union "we can get some pretty good contracts through the state, the City of Chicago or possibly out in the suburbs and make a lot more money than what a few Burger Kings, or you know, Kentucky Fried Chickens would offer us." Castiello responded, "fuck that, fuck that." Myles testified that Castiello also said that he "p[o]lled his clients and they said, look, we really can't afford that, you know." Myles recalled Castiello stating that "if the union thing is happening and it's just, you know, it's kind of bull shit at this time because we don't, we can't really afford it. They couldn't afford to pay us as employees that much, you know."

In this conversation, Castiello also said, that if Stacey thought "he was bringing the union [in] maybe he had just another thing coming." Although he could not recall it without prompting, Myles agreed that Castiello had told him—as stated in Myles' affidavit given to the Region during the investigation of this case—that Castiello had said that "the company is not going union" and "that Bryan was one step out the door and we're going to need a lead tech so you need to step up."[14]

g. Stacey's suspension and discharge

On October 19, Office Manager Traviss was on a smoke break and noticed two packages in the RMES shipping area that listed Stacey's home as the return address. She asked RMES shipping employee Joe Albonido about the packages. He told her that Stacey had asked him to send them and that he assumed they were work related. Traviss then brought the packages to Keating and told him what she had found. Keating told Traviss to tell Stacey that he wanted to see Stacey regarding this the next morning.

Stacey testified that the effort to ship personal items on October 19 was simply the continuation of a practice he had engaged in while working for Repair Masters. According to Stacey, after an item had shipped he would go to RMES Office Manager Martin who would look up in the computer the cost for shipping the item and Stacey would reimburse RMES by paying Martin, sometimes with checks.

When Stacey arrived at work the morning of October 20, Traviss told him that she had something for him to sign. She said, "I don't really want to give this to you but I have to because its my job." She handed him a Discipline Notice (GC Exh. 7) that set forth his "suspen[sion] without pay until an investigation has been completed" for "attempt of theft" in seeking to mail

[14]I credit Myles' testimony. In that regard two points should be made. First, while I believe Myles testified honestly, it was also clear that he did not show up at the hearing with an interest in doing any favors for the General Counsel or the Union. He reluctantly gave his testimony regarding the comments made by Keating and Castiello. (He gratuitously appended to his answer to a question about Parrilli's loss of his first union authorization card that it was "red flag no. 1."). I am confident that he exaggerated nothing in favor of the General Counsel. Second, his testimony is uncontradicted. Keating and Castiello testified at the hearing—after Myles had already testified—but neither was asked nor stated one word about this conversation.

the two personal items.[15] Stacey immediately took issue with indication on the notice that it was a 2nd disciplinary notice and called it "bogus." Traviss told Stacey he would have to talk to Keating. Stacey went to Keating's office. Keating said that, "you were told by Todd [Martin] that you're not allowed to ship anything out of the office." Stacey replied that, "Todd never told me anything." Keating responded, "that's the way it is." Stacey went to get Martin and brought him to Keating's office. According to Stacey, Martin denied having told Stacey that he wasn't to ship anything out of the office, stating, "no, I never told him anything about it." Stacey said, "see, Todd never told me." At that point, Keating stated, "well Janice [Traviss] told you." Stacey denied that Traviss had ever told him anything to that effect and he went and brought Traviss to Keating. Stacey said that Traviss said she told Stacey about not shipping, but when Stacey asked her when, she said she didn't remember.[16]

Keating's reaction was to say to Stacey, "well that's the way its going to be. You've got two days off. You have to call in and find out whether you got work for Monday." Stacey then left the building, removed the company "truck stock" from his van and left the premises. On the way home Stacey attempted to call his wife to tell her what had happened and discovered that his company cell phone had been deactivated.[17]

On Monday morning, October 24, and each morning thereafter until November 1, when Stacey came to the RMES offices to pick up his paycheck, Stacey called work to find out if he should return. Each morning he spoke with Traviss who told him there was no work.[18]

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[15]Keating had no explanation for why the 2nd page of this notice indicates that it was signed and dated October 5. I do not read anything into that other than an inadvertent error.

[16]Traviss is an admitted supervisor and agent of Respondent. See Resp. Answer at paragraph 4. She did not dispute Stacey's testimony in this regard.

[17]I credit Stacey's account of his suspension. There are some discrepancies between his account and that offered by Keating and Traviss (and as I discuss, infra, the testimony of Keating and Traviss diverge in ways that are significant). Keating testified that on October 20, when he informed Stacey that "I did not condone the shipping of personal items from the building at 625 Estes Avenue," and handed him the suspension notice, Stacey did not say one word in response--"not a word." That is hard to believe. Silence in the face of an unprecedented suspension would be at odds with the portrait of the outspoken and somewhat confrontational personality painted in the record and that I observed at the hearing. Moreover, Castiello's assistant Jennifer Stephens testified that the request to review Stacey's timesheets (which Castiello initiated October 20 the day of Stacey's suspension) came after Keating, Castiello and Stacey had a big argument. While Castiello was not involved in the argument, the only possible "argument" she could have been referring to was the confrontation when Stacey was suspended, demonstrating, of course, that Stacey did not silently accept his suspension.

As to Traviss' assertion that she talked to Stacey and Martin about the suspension on October 19, I do not credit it, for reasons discussed at length, infra. Some version of the conversations she described may have, in fact, happened the morning of October 20, which is consistent with Stacey's account of conversations on the subject between Martin, Traviss, and Stacey. At this juncture I note only that in her short testimony Traviss exhibited an eagerness to provide testimony critical of and adverse to Stacey that undermined her credibility. In any event, Traviss did not dispute Stacey's account of the conversations on October 20.

[18]Stacey's testimony on this point—that he called in each morning for work and was told

Continued

The suspension notice stated that Stacey was "suspended without pay until an investigation has been completed." However, the investigation that B-G undertook after Stacey's suspension did not concern the propriety of shipping personal items or whether over the years Stacey had done this and reimbursed the company—no such investigation was ever done. Rather, the investigation that Castiello immediately undertook the afternoon of October 20, was described by Castiello as an effort to see "what else has Bryan be[en] stealing."

To this end Castiello directed his assistant Jennifer Stephens[19] "to go through each and every [time sheet] using the map on the Internet and find out what the mileage from place to place would be, as opposed to what Mr. Stacey had written." Stephens understood that she was not to tell anyone that she was doing this for Castiello. Stephens accomplished her task by inputting the address of each job listed on Stacey's timesheets (from August 9 through October 19) and obtaining mileage from one job to the next using an internet program and comparing it to the mileage listed on Stacey's timesheet. Where necessary to find the address of a listed job Stephens would consult Traviss' job log. However, Stephens did not consult with Stacey in preparing her analysis. Stephens made the calculations for all the timesheets, marked the mileage she got from the internet on the right hand side of the timesheets and totaled them. After she provided this to Castiello he came back a couple of days later and asked her to redo the calculations and attach print outs of the MSN-generated map and mileage calculations "so we had paper copies of them showing how I got to the mileage." She attached those sheets to the back of the time sheets and gave them to Castiello. The vast majority of those original MSN sheets were lost by Castiello within the last couple of months before the hearing in this case.

Castiello testified that Stephens' MSN search showed that a total of 2700 miles were required to travel to and from the jobs listed on all of Stacey's timesheets from August 9 through October 19. However, Castiello testified that Stacey's timesheets indicate he had driven 1600 additional miles during this period of time. Castiello did not seek an explanation from Stacey. Instead he took the MSN print outs and time sheets to Keating and explained the results to him. Keating reviewed it (although according to both he and Castiello, at first he did not understand what he was looking at until Castiello went over it with him). Keating testified that, "[i]t was evident by what I was looking at that Mr. Stacey was stealing from us." Castiello agreed that it looked that way.

On the basis of the timesheets and MSN print outs, with Stephens' and Castiello's calculations on them, Keating reached the decision to terminate Stacey by October 28, and

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none was available—was uncontradicted. Traviss testified but did not dispute Stacey's testimony in this regard. In addition to my belief that Stacey was a credible witness in his own right, in the face of Traviss' (or any other witnesses') failure to deny Stacey's account, I credit it. Of course, Stacey's suspension notice stated that he was suspended indefinitely—not for two days. But the two are not necessarily inconsistent. Keating did not promise that Stacey could return in two days, only that he should call. I don't think there is any question that there was, in fact, work for Stacey during the week of October 24, and into the next week. In fact, Tario specifically recalled that the week Stacey was suspended the work load was "heavy" because the "work of three guys now had to be divided into two." Traviss may have, somewhat euphemistically, told Stacey that there was no work available, but this was simply the continuation of his indefinite suspension.

[19]Stephens testified that she had been an employee at RMES for "over four years" and does "[v]arious tasks that Mr. Castiello appoints to me" for all three companies at 625 Estes Avenue.

wrote Stacey's termination notice on that date. He contacted Castiello that morning by phone and told him that he was typing up Stacey's termination papers.

The notice was not presented to Stacey until November 2, because Keating was not available until then. On the morning of November 1, Stacey came into Repair Masters' offices to pick up his paycheck. Traviss told Stacey that Keating wanted to meet with him the next morning. Stacey returned the next morning. At that time Keating presented him with a termination notice. The notice stated:

> Since the time B-G Electronics began paying you mileage on your vehicle, you have consistently abused that policy by padding your miles to the tune of over 1,600 miles. In plain and simple terms you have been stealing from your employer. As of October 28, 2005 you terminated from the employ of Parrotkeat Enterprise Inc.

The notice also stated that, "along with the money stolen from B-G" Stacey was responsible for returning any B-G property. The notice also warned Stacey that if he contacted B-G or RM Services customers and "slander or defame said companies" the result would be "an immediate law suit brought on yourself."

Stacey told Keating that the notice was "bogus" and denied ever padding his miles. He told Keating that, "I can't substantiate my mileage because I don't have it in front of me." Keating did not show Stacey any timesheets or the review that Castiello and Stephens had done of his timesheets. Keating told him "that's it, you're fired, that's just the way it is, you're terminated." Stacey was not provided an opportunity to explain his actions or contest the charge against him at any time.

About two weeks before Thanksgiving, Keating was discussing jobs with Myles and noted to Myles "[w]ell, at least with Bryan gone now we've got some, the quality of work will go up" and "we won't be having any of that, him instigating any union thing."[20]

III. Analysis and Conclusions

a. The independent 8(a)(1) allegations

Section 7 of the Act grants employees, among other rights, "the right to self-organization, to form, join, or assist labor organizations." 29 U.S.C. § 157. Pursuant to Section 8(a)(1) of the Act, it is "an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7." 29 U.S.C. § 158(a)(1). In this case, the General Counsel alleges that Respondent committed three independent violations of the Act. I consider each in turn.

1. The Government alleges (complaint paragraph 5(a)) that B-G violated Section 8(a)(1) of the Act by twice threatening employees with closure of the business if employees chose union representation. The General Counsel contends that Castiello's statements to Tario and Myles regarding the effect of unionization on B-G were violative of the Act.

In *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969), quoting section 8(c) of the Act, the Supreme Court described what employers may lawfully say about the consequences of unionization:

[20]Myle's testimony on this point was uncontradicted and is credited.

> An employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a "threat of reprisal or force or promise of benefit." He may even make a prediction as to the precise effect he believes unionization will have on his company. In such a case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control.

In order to be a lawful prediction—and not an unlawful threat--the employer's prediction of the consequences of unionization must include articulation to employees who hear the prediction of the objective evidence supporting it. *Center Service System Div.*, 345 NLRB No. 45, fn. 15 (2005); *Systems West LLC*, 342 NLRB No. 82 (2004) (unlawful threat of plant closure found, in part, because "the employer offered no evidence to the listening employees justifying these predictions"). See, e.g., *Curwood Inc.*, 339 NLRB 1137, 1137–1138 (2003) (employer statements about potential plant closure not coercive where employer "provided objective material reflecting its customers' concerns" in its statements to employees).

Specifically, Castiello's comments to Tario raised the specter that B-G would have to close if it unionized because unionization would increase costs to customers and B-G would probably lose their customers. Castiello told Tario that having a union "would put us right out of the ball game . . . . it would be cost prohibitive and we would probably lose the accounts and we might have to close down.[21] However there is not the slightest record evidence that Castiello's comments were either based on objective facts or addressed consequences beyond Respondent's control. Castiello framed his comments as explaining action that customers would take in response to unionization. However, he talked in "vague generalities" and his explanation assumed that unionization would increase the costs charged to customers, a matter not beyond, but rather, within the control of Respondent. To the extent the suggestion was that Union wage demands would "require" Respondent to charge customers higher prices, there is no evidence at all about what the union's demands would be and, in any event, it is axiomatic that Respondent would have to agree in collective bargaining to any increase in wages. Thus, higher union wages are not "demonstrably probable consequences beyond [Respondent's] control." *Gissel*, supra. See, *Debber Electric*, 313 NLRB 1094, 1097 (1994) ("An employer is not permitted, under *Gissel*, to jump from the unstated or unproven premise that a union's wage scale is fixed and immutable to a conclusion that he may have to shut down in the event of unionization, and convey this ultimate conclusion to employees"); *Schaumburg Hyundai, Inc.*, 318 NLRB 449, 450 (1995) (unlawful to threaten employees with adverse consequences based on adoption of "standard" union contract where terms of any agreement covering employees is subject to collective bargaining).

Second Castiello "neither informed his listeners nor testified at the hearing that his statements were based on any such" information. *Systems West LLC*, 342 NLRB No. 82, slip op. at 2 (2004). There was, in fact, nothing "objective" about or buttressing Castiello's comments. Indeed, Tario described Castiello's explanation of why unionization could lead to price increases for customers, and thus to plant closure, as "just vague generalities" about pricing. In Respondent's answer to the complaint, B-G defends Castiello's comments as being based on

[21] As mentioned, supra, Tario's account of the incident was not contradicted or addressed by Respondent's witnesses.

> economic necessity known to all B-G owners at the time [the] comment was made because: (i) B-G customers had previously indicated to B-G owners that such customers would not pay higher hourly wages for electrical technician services precipitated by [a] Union contract; and (ii) B-G was in extremely poor financial condition.

There is no independent evidence in the record, or any testimony by Castiello, that any customer of B-G ever expressed any concern regarding the Union.[22] No objective basis for such a claim was offered to Tario during the conversation. There is no evidence in the record regarding B-G's financial condition, and no claim of financial distress was made by Castiello to Tario during the conversation. Under these circumstances, I have no hesitation in concluding that Castiello's statement to Tario was an unlawful threat violative of Section 8(a)(1).

The second of the two instances of unlawful threat of closure alleged in paragraph 5(a) of the complaint is based on Myles' account of his conversation with Castiello, in which Castiello told him that unionizing B-G was "kind of bull shit at this time because we don't, we can't really afford it. They couldn't afford to pay us as employees that much, you know." He also testified that Castiello stated that Stacey "was trying to lose all our customers because they don't want to pay the union rate." These comments do not contain a threat of reprisal but are simply observations that the employer could not pay the standard union wage rate and that customers don't want to pay for it. *Arc Las Vegas Restaurant, Corp.*, 335 NLRB 1284, 1285 (2001), enfd. in relevant part, 334 F.3d 99 (D.C. Cir. 2003). Thus, I find merit to only one of the two instances of unlawful threat of plant closure alleged in paragraph 5(a) of the complaint.

2. The Government alleges (complaint paragraph 5(b)) that Castiello unlawfully told employees it would be futile to seek union representation. Myle's credited testimony is that Castiello told him that "the company is not going union." This was in the same conversation in which Castiello said that Stacey "had another thing coming" if "he was bringing the union" and made other disparaging (albeit, in isolation, lawful) comments regarding union representation. Standing alone, but especially in context, Castiello's declaration to Myles that, "the company is not going union" sent the message that the employees' organizational efforts were futile. That is a violation of the Act. *Bestway Trucking, Inc.*, 310 NLRB 651, 671 (1993), enfd. 22 F.3d 177 (7th Cir. 1994).

3. The Government also alleges (complaint paragraph 5(c)) that Castiello's comments to Myles constituted an unlawful threat of unspecified reprisal against employees for choosing to be represented by a union. The threat of reprisal was directed towards Stacey. Myles' uncontradicted and credited testimony is that Castiello told him that Stacey "had another thing coming" if "he was bringing the union." In this same conversation Castiello told Myles "that Bryan was one step out the door and we're going to need a lead tech so you need to step up."

This is an unlawful threat to retaliate against Stacey for his union activity. Castiello told Myles that because of Stacey's protected union activity, he had "another thing coming." He even suggested what that thing was—telling Myles that Stacey was already "one step out the door"—so, in fact, the threatened reprisal was not wholly unspecified. Castiello's threat would have a reasonable tendency to interfere, restrain, or coerce employees in the free exercise of

[22]Myles testified that Castiello said that "he p[o]lled his clients and they said, look, we really can't afford that, you know." But Castiello did not say this to Tario and Castiello never testified to saying this at all. The fact that he told Myles this is not objective evidence that it is true.

employees' section 7 rights. See, *J.P. Stevens & Co.*, 245 NLRB 198 (1979) (supervisor's statement that engaging in union activities would have serious consequences constitutes an unlawful threat). It was therefore violative of Section 8(a)(1) of the Act.[23]

b. The 8(a)(1), (3) and (4) allegations: Stacey's warning, suspension, and discharge

Section 8(a)(3) of the Act provides, in relevant part, that it is "an unfair labor practice for an employer by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." 29 U.S.C. § 158(a)(3). Section 8(a)(4) of the Act provides that it is an unfair labor practice for an employer "to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act." 29 U.S.C. § 158(a)(4). "Because any conduct found to be a violation of either or both of these provisions would also discourage employees' Section 7 rights, any violation of Section 8(a)(3) and/or 8(a)(4) of the Act is also a derivative violation of Section 8(a)(1) of the Act." *Chinese Daily News*, 346 NLRB No. 81, slip op. at 28 (2006).

The Government contends that the Stacey's effort to bring union representation to B-G's workplace motivated Respondent to warn, suspend, and terminate his cell phone account, and then to discharge him on October 28, in violation of Section 8(a)(1) and (3) of the Act. The Government further contends that Stacey's appearance as a witness at the October 27 representation hearing also motivated Respondent to discharge him, and, thus, the discharge was additionally violative of Section 8(a)(4) of the Act. Respondent denies any unlawful motive for Stacey's discharge or suspension and contends that its treatment of Stacey was prompted solely by legitimate motives: it claims that he was warned and suspended for attempting to use RMES's corporate shipping account and then fired when B-G determined that Stacey had been falsely reporting mileage for reimbursement. Respondent contends that Stacey's cell phone account was terminated attendant to his lawful suspension from employment.

1. Section 8(a)(3) allegations

The Supreme Court-approved analysis in 8(a)(1) and (3) cases turning on employer motivation was established in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). See, *NLRB v. Transportation Mgmt. Corp.*, 462 U.S. 393, 395 (1983) (approving *Wright-Line* analysis). In *Wright Line* the Board determined that the General Counsel carries the burden of persuading by a preponderance of the evidence that the employee's protected conduct was a motivating factor (in whole or in part) for the employer's adverse employment action. Proof of such discriminatory motivation can be based on direct evidence or can be inferred from circumstantial evidence based on the record as a whole. *Robert Orr/Sysco Food Services*, 343 NLRB No. 123, slip op. at 2 (2004); *Embassy Vacation Resorts*, 340 NLRB 846, 848 (2003).[24] Such a showing proves a violation of the Act subject to

[23]Respondent defends against the independent 8(a)(1) case by asserting that none of the employees felt threatened by Castiello's remarks. However, in determining the coerciveness of such remarks, the Board applies the objective standard of whether the remarks reasonably tend to interfere with the free exercise of employee rights. The Board does not consider either the motivation behind the remarks or their actual effect. *Miller Electric Pump & Plumbing*, 334 NLRB 824, 825 (2001); *Joy Recovery Technology Corp.*, 320 NLRB 356, 365 (1995), enfd. 134 F3d. 1307 (7th Cir. 1998).

[24]"To support an inference of unlawful motivation, the Board looks to such factors as inconsistencies between the proffered reasons for the discipline and other actions of the

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the following affirmative defense available to the employer: the employer, even if it fails to meet or neutralize the General Counsel's showing, can avoid the finding that it violated the statute by demonstrating by a preponderance of the evidence that the same adverse employment action would have taken place even in the absence of the protected conduct. For the employer to meet its *Wright Line* burden, it is not sufficient for the employer simply to produce a legitimate basis for the action in question. It must "persuade" by a preponderance of the evidence that it would have taken the same action in the absence of protected conduct.[25]

Turning first to General Counsel's initial burden, to carry his burden the General Counsel must show "'(1) that the employee was engaged in protected activity, (2) that the employer was aware of the activity, and (3) that the activity was a substantial or motivating reason for the employer's action.'" *Naomi Knitting Plant*, 328 NLRB 1279, 1281 (1999) (quoting *FPC Holdings, Inc. v. NLRB*, 64 F.3d 935, 942 (4th Cir. 1995), enfg. 314 NLRB 1169 (1994)).

Here, there is no question that Stacey was engaged in protected activity when he spearheaded the union campaign among the technicians, attended the union meeting, solicited authorization cards from other technicians and talked to employees about the union and what it could do for them and the business. There is also no doubt that Respondent was aware of Stacey's protected activity, no later than late September or early October when, the day after he signed his first union authorization card, Tario went to B-G management and told them "that Bryan [Stacey] was bringing, you know, trying to attempt to bring the union into our shop." Respondent also evinced awareness of Stacey's activities in mid-October when Castiello discussed the union with Myles. According to Myles, Stacey's name came up in the conversation "union wise" because by this time "[e]verybody knew, it was the buzz in the shop."

There is also compelling evidence that a substantial reason for Respondent's discipline of Stacey was Stacey's protected activity in support of the Union. Most obviously, there is express evidence of Respondent's animus, not only towards the Union but specifically towards Stacey for his effort to bring a union to Respondent's business and a threat of reprisal directed towards Stacey for that effort. In his conversation with Myles, Castiello warned that if Stacey thought "he was bringing the union [in] maybe he had just another thing coming." The thing came in the form of a suspension and then a discharge from employment just days later. At the time of his conversation with Myles, Castiello stated that Stacey "was one step out the door." The suspension put both feet out the door and Stacey was never to return. Castiello's threat against Stacey *for trying to bring a union to B-G coupled with the warning that Stacey already had "one step out the door"* is highly suspicious—and without more—warrants the conclusion that Stacey's protected union activity was a motivating factor in his suspension. That the

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employer, disparate treatment of certain employees compared to other employees with similar work records or offenses, deviations from past practice, and proximity in time of the discipline to the union activity." *Robert Orr/Sysco Food Services*, 343 NLRB No. 123, slip op. at 2.

[25] *NLRB v. Transportation Mgmt.*, 462 U.S. 393, 395 (1983) (rejecting employer's claim that its burden is met by demonstration of a legitimate basis for the discharge); *Carpenter Technology Corp.*, 346 NLRB No. 73, slip op. at 8 (2006) (The issue is, thus, not simply whether the employer 'could have' disciplined the employee, but whether it 'would have' done so, regardless of his union activities). *Weldun International*, 321 NLRB 733 (1996) ("The employer cannot carry this burden merely by showing that it also had a legitimate reason for the action, but must 'persuade' that the action would have taken place absent protected conduct by a preponderance of the evidence") (internal quotation omitted), enfd. in relevant part, 165 F.3d 28 (6th Cir. 1998).

suspension occurred just days after the threat,[26] and less than a week after the union's representation petition was faxed to B-G, and the day after it was received in the mail, only heightens the suspicion and further justifies this conclusion. The Board has long recognized that in discrimination cases "the timing of the [employer's conduct] is strongly indicative of animus." *Electronic Data Systems*, 305 NLRB 219, 220 (1991), enfd. in relevant part, 985 F.2d. 801 (5th Cir. 1993); *Structural Composites Indus.*, 304 NLRB 729, 729 (1991).

The discharge is similarly suspect, for the same reasons. In fact, the suspension led directly to his discharge. The day the suspension issued Castiello ordered his assistant to review time sheets that he had already routinely reviewed as they were submitted, but that hitherto had not been the basis for discipline. That Castiello knew what his assistant's review would show is evident from his direction to her to determine the mileage the internet program showed for Stacey's jobs "as opposed to what Mr. Stacey had written." The information was obviously collected for the purpose of providing a basis for Stacey's discharge. As with the suspension, Castiello's recent threat of reprisal against Stacey for engaging in protected activity, and the context of his unlawful comments coupled with the timing of Stacey's discharge just days after Castiello's unlawful threats, provide solid evidence supporting the General Counsel's contention that Stacey's protected conduct was a motivating factor in the discharge. Finally, this conclusion is supported by Keating's statement, just a week or so after the discharge that with Stacey gone "we won't be having any of that, him instigating any union thing."

It is also relevant to the General Counsel's case that neither the suspension nor the discharge was accompanied by a meaningful investigation intended to uncover the facts surrounding the incidents or to consider Stacey's side of the matter. The failure to conduct a meaningful investigation before suspending and discharging Stacey adds weight to the General Counsel's case.[27]

Keating suspended Stacey without any prior investigation into whether Stacey's actions in attempting to ship two personal items violated any policy or practice at RMES (Keating admitted that there was no pre-existing written policy at B-G about such matters), or whether there was truth to Stacey's assertions that he had regularly shipped personal packages and then reimbursed the company for the costs. Keating testified that when he suspended Stacey he did not know RMES' policy on shipping. When asked why the suspension notice stated that Stacey was suspended "until an investigation has been completed," Keating replied: "I wanted to check to see if there was an existing policy indicating that this had ever been done before, if it was allowed. I didn't know if it had." In fact, there is no evidence that any such investigation was ever undertaken.

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[26]Myles stated that the conversation occurred in mid-October. Stacey was suspended on October 20, but the disciplinary notice states that it is "effective immediately, October 19, 2005."

[27]*Diamond Electric Mfg*, 346 NLRB No. 83, slip op. at 4 (2006) ("the failure to conduct a meaningful investigation or to give the employee [who is the subject of the investigation] an opportunity to explain may, under appropriate circumstances, constitute an indicia of discriminatory intent. The Board has considered this factor in several recent cases to find discharges unlawful where employees were denied the opportunity to provide a potentially exculpatory explanation prior to being discharged, and to dismiss allegations of unlawful discharge where such an opportunity was provided") (Board's bracketing) (footnotes omitted) (quoting *K&M Electronics.*, 283 NLRB 279, 291 fn. 45 (1987) ("failure to conduct a meaningful investigation or to give the employee an opportunity to explain has been regarded as an important indicia of discriminatory intent").

Similarly, with regard to the discharge, Stacey was never provided an opportunity to see the evidence marshaled against him. He was never shown the timesheets and never shown the internet searches that formed the basis for his discharge. The evidence was simply pulled together and he was discharged. This is noticeably at odds with Castiello's earlier practice of going to Stacey and discussing mileage concerns and discrepancies with him.

Thus, given Castiello's threat against Stacey, the timing of Respondent's actions, the lack of a meaningful investigation, and Keating's post-discharge comment to Myles about Stacey, there is significant evidence that discriminatory intent motivated Stacey's suspension and discharge. The General Counsel has met his initial burden and demonstrated that Stacey's union activity was a motivating factor in Stacey's suspension and discharge.

Where, as here, the General Counsel initially makes a showing that protected conduct was a motivating factor the General Counsel has proven the case subject to Respondent's ability to show that the adverse action would have occurred in the absence of protected activity.

Respondent's position is that Stacey's misstatement of mileage and time on his timesheets was a problem that was ongoing, and that concerned Respondent before Stacey was involved in union activity. In Respondent's view the issue came to a head, and Respondent moved to collect the evidence from Stacey's timesheets, once Stacey was suspended for trying to ship personal items. As B-G points out, given Stacey's argument with Castiello on August 5, and his subsequent encounter with Keating at the Dunkin Donuts, the threat of termination had already been raised with Stacey. Stacey feared termination, as evidenced by his statement to Tario that because of his union activity "they can't touch me now." According to B-G, the attempt to mail personal packages from RMES provided grounds to take action against and suspend Stacey, and is action that it would have taken even in the absence of his Union activity. Concerned by this "attempted theft," they looked for more and found it in his mileage reimbursement requests. In B-G's view this was ample cause to discharge Stacey, and, again, it is an action it would have undertaken even in the absence of Stacey's protected activity.

I cannot accept this defense under the circumstances presented here. As noted, supra, for the employer to meet its *Wright Line* burden, it is not sufficient for the employer simply to produce a legitimate basis for the action in question. It must "persuade" by a preponderance of the evidence that it would have taken the same action in the absence of protected conduct. See note 25, supra. In the face of the General Counsel's case, which includes an express articulation of a threat to take reprisals against Stacey for his union activity, Respondent has failed to prove by a preponderance of the evidence that it would have suspended or discharged Stacey in the absence of his union activity.

While the record shows that conflict between Stacey and B-G management, including threats of termination, preceded Stacey's union activity, Respondent's testimony, argument on brief, and suspension and discharge papers, show that Stacey's suspension and discharge did not purport to be based on these prior incidents. Having said that, I readily assume that the deterioration of the relationship with Stacey played some role in B-G's desire to discharge Stacey (especially given the initial high hopes of all concerned for the working relationship). But the fact is no action was taken against Stacey and he remained an integral part of the operation until his union activity came to management's attention. In the face of the General Counsel's initial showing, a review of the rationale for and events surrounding the suspension and discharge demonstrates that even if not wholly pretextual (an issue I need not reach), Respondent would not have suspended or discharged Stacey in the absence of his protected activity. Certainly, Respondent has failed to persuade otherwise.

As discussed, supra, the suspension was based on no pre-existing policy, and no pre-existing practice.[28] The effort to use RMES mailing computer and account was a cause for suspension essentially because Keating claims that as a general matter he does not condone shipping of personal items. He did not know RMES's policy on the matter and claims he did not check with Castiello before suspending Stacey. In this case, as Respondent submits, "[a]ll" that "Mr. Keating or Ms. Traviss knew at the time of Mr. Stacey's suspension was that a B-G employee was attempting to ship two personal packages without prior authorization of B-G management, a theretofore incident which had not been experienced by the nascent company." (R. Brief at 31).

An employer, of course, may take the view that such conduct warrants suspension. But the bona fides of that view are at issue.[29] One wonders about the rush to suspend Stacey for "attempted theft" not from B-G, but from RMES, the sister company owned by Castiello and housed at 625 Estes. I recognize that there was significant interrelationship—physical, financial, and operational—between the two companies. But Keating had no prior or current affiliation with RMES and it strikes me as decidedly suspicious that he would not even bother to talk to Castiello (who owned) RMES, before suspending Stacey for attempting to mail packages through RMES. Notably the terms of the suspension notice asserts that "[e]mployees are not allowed to ship personal items and have the company pay for them and this is well known by Mr. Stacey, as he has previously been in a position to ship out company related materials." However, it is this very point that Keating had no knowledge of when he suspended Stacey and which Stacey claimed was false. Stacey was suspended for attempted "theft" from RMES, but Keating had no idea if, in fact, it was "theft" as such a claim necessarily turns on RMES's policies and practices. Even more suspicious, is Keating's failure to undertake the investigation that he testified, and which the suspension notice he wrote stated, would be undertaken to determine RMES's policy on the matter.[30]

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[28]I reject Respondent's reliance on the RMES employee handbook's general admonition against theft of property as constituting a rule against the mailing of personal items from the company mailroom with reimbursement to the company. An employer could interpret a general rule against theft that way, but there is no evidence that RMES did. Not a single witness testified to having any personal knowledge that RMES or B-G had a policy against mailing of personal items from work. In particular, Castiello, who had worked closely with Stacey for many years, did not testify that this practice was prohibited at Repair Masters, or even that he was unaware of Stacey's practice in this regard. In his testimony, Castiello had nothing whatsoever to say about Stacey's claims that he regularly shipped personal items while at Emanon Sound. I note that Castiello served as Respondent's Rule 615 representative and was present for all of the testimony in this case.

[29]"Although the Board cannot substitute its judgment for that of an employer and decide what would have constituted appropriate discipline, the Board does have the role of deciding whether the employer's proffered reasons for its action is the actual one, rather than a pretext to disguise antiunion motivation." *Construction Products Inc.*, 346 NLRB No. 60, slip op. at 7 (2006); *Detroit Paneling Systems,* 330 NLRB 1170 (2000); *Uniroyal Technology Corp. v. NLRB*, 151 F.3d 666, 670 (7th Cir. 1998).

[30]Respondent fashions an argument that the "investigation" anticipated in the suspension notice was not an investigation into shipping policy, but the investigation into Stacey's time sheets undertaken by Castiello the day of the suspension. That is an unlikely reading of the

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My conclusion that the suspension would not have occurred absent Stacey's union activity accepts, as Keating stated, and as I have found, that no investigation was undertaken before Stacey was suspended. On brief, Respondent fashions an argument that, contrary to Keating's testimony, there was an investigation of sorts. Respondent contends (R. Brief at 29) that Keating (and Traviss) checked with RMES Office Manager Martin on October 19, before suspending Stacey. This contention is based on the testimony of Traviss, who testified that on October 19, the day she discovered the packages, Keating went and asked Todd Martin, RMES office manager, what the "normal" procedure was on shipping packages. In his testimony, Keating did not reference talking to Todd Martin on October 19, or anytime for that matter. However, if Traviss truthfully testified that Keating talked to Martin, then I conclude that it is a conversation that Keating is covering up. If they talked, and Martin did not corroborate Stacey's claims about prior shipping, it surely would have been mentioned by Keating to Stacey, in the suspension notice, and in his testimony at trial. But it was not.

Respondent did not call Martin to testify and no explanation for failing to do so was offered or may be gleaned from the record. I credit Keating over Traviss, and therefore conclude that the conversations she described as happening on October 19, either did not happen at all, or are a mistaken and inaccurate reference to the October 20 conversations that Stacey testified about, in which he confronted Traviss and Martin in the presence of Keating, regarding his prior practice of mailing personal items from work. But the fact that neither Keating nor Traviss' conflicting account of events advance Respondent's case demonstrates the deeply flawed position of Respondent.[31]

With regard to the discharge, as discussed supra, Castiello's instructions to Stephens anticipated the results, which makes sense because the "investigation" concerned mileage disputes that Respondent knew of, and had tolerated (in the case of Castiello) and ignored (in the case of Keating) since the beginning of the requirement that Stacey and other technicians fill out time sheets to be reimbursed for mileage. Because of discrepancies between the mileage listed on Stacey's timesheets and Castiello's contemporaneous review and scrutiny of the time sheets, Stacey was, nearly every payday, receiving less mileage than he put in for. Stacey's efforts to raise this issue with Keating were ignored throughout September and October. Castiello asserts that he discussed these matters with Stacey in September. There was no hint of discipline or threat to Stacey's employment in these conversations. Suddenly, in the wake of

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suspension notice, and at odds with Keating's testimony. But if true it reflects that there was not even a pretense of interest in Stacey's side of the story.

[31]I further note that Traviss also claims that on October 19 not only Keating but *she* talked with Martin about Stacey's shipping of personal items. In response to a question about a conversation with Stacey, *Traviss added—without a question being posed*—that she went to Martin and, according to Traviss, Martin denied ever receiving money from Stacey from personal items shipped. (See, Tr. 343). I sustained an objection to this testimony and ordered that the testimony regarding Martin's comment be stricken from the record. While admissible for purposes of what Martin told Traviss, that was not the purpose for which it was offered, and there is no evidence that Traviss acted upon, or told Keating what Martin allegedly told her, and therefore what Martin told Traviss is without substantive relevance. It is hearsay to the extent offered as evidence of RMES policy about shipping personal items or as evidence of whether Stacey had previously paid Martin for personal items he admittedly shipped. In any event, if I considered this testimony, I would not credit it, as neither Martin (who did not testify) nor Keating (who did) corroborated it, and Traviss' bias was apparent.

the union drive and Castiello's threat that Stacey "had another thing coming" if he thought he could bring the union to B-G, the long tolerated issue of Stacey's mileage reimbursement became grounds for immediate discharge for "stealing from your employer." As with the suspension, Stacey was not provided an opportunity to explain his timesheets, or offer an explanation of any kind.

In fact, record evidence suggests an explanation for the discrepancy between the internet searches of the distance between jobs listed on Stacey's timesheets and the mileage for which he sought reimbursement. This was Stacey's practice of dropping in on customers in the area that he was already working to see if they needed servicing of any items. According to Stacey, "[i]f I'm in Rockford and I got two service calls in Rockford I'm going to hit my other three Arby's out there and my other two Popeyes." Stacey considered this "good customer relations" and was consistent with his view of himself as "more than a technician" for B-G (and Emanon). Sometimes these calls generated additional orders and sometimes they did not, but Stacey testified that he routinely engaged in these "courtesy calls" for B-G as he had for many years for Emanon. These calls would not be recorded on the timesheets if no sale or service was provided. Yet Stacey considered this part of his job and did not subtract out the drive to these customers when transferring his odometer readings to his timesheets.

On brief, Respondent appears to accept this explanation and, indeed, contends that Stacey's timesheets show that he made such calls nearly every working day in August and September. Of course, B-G is free to ban such courtesy calls, and discharge employees for making them—but here while never expressly authorized, they were never expressly prohibited either,[32] and it strains credulity to believe that Castiello, who had worked very closely with Stacey for years, was unaware of Stacey's long time work practices, but even that is not the point. The point is the complete lack of interest in securing an explanation for the mileage disparity from Stacey at the time of his discharge. This is particularly true given that the entire mileage reimbursement scheme had been in effect for just over two months at B-G and the practices and procedures surrounding it were being developed. If Stacey's explanation is accepted, even it is assumed that it violates a policy of B-G, it is not "padding mileage" or "stealing from the employer"—as most people understand those terms—to service customers without a job order. Just as the rush to characterize the attempt to mail two personal packages as "attempted theft" from RMES—without any knowledge of RMES's policies or practices is suspect—so too is the immediate conclusion that Stacey was "padding mileage" and "stealing from the employer" because the odometer readings on Stacey's timesheets could not be matched to the jobs on his timesheets. It bespeaks of an effort to "get" Stacey, not to determine what he was doing wrong.[33]

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[32]Respondent points to an August 23 RMES memo (directed to RMES employees but signed by Stacey for unexplained reasons) as evidence that making stops at established customers was prohibited. But the memo does not say that. Rather, it states that whenever work is performed for a customer the job number must be phoned in. Some of Stacey's courtesy calls resulted in jobs—and presumably were called in and listed on the time sheets—but many did not. The memo does not address that situation.

[33]Respondent points out that an administrative law judge for the Illinois Department of Employment Security, in affirming the denial of unemployment compensation benefits for Stacey, ruled that Stacey was discharged for theft and that he provided false time and mileage

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In sum, while it is obviously true that some employers would discharge an employee for attempting to ship a personal item through a sister company's mailroom, or incorrectly filing mileage reimbursement sheets, the question here is not whether another employer would have discharged an employee under such circumstances. The question is whether this employer would have discharged Stacey in the absence of his protected conduct. Respondent has failed to persuade that absent Stacey's protected activity, it would have suspended or discharged him. Accordingly, Respondent's affirmative defense fails and I find that it violated Section 8(a)(1) and (3) of the Act when it suspended and discharged Stacey.[34]

2. Section 8(a)(4) allegation

The *Wright Line* analysis is also used in evaluating Section 8(a)(4) claims. *American Gardens Mgmt Co.*, 338 NLRB 644, 645 (2002); *Taylor & Gaskin, Inc.*, 277 NLRB 563 fn. 2 (1985).

The Government points out that Stacey was discharged October 28, one day after he testified in support of his inclusion in the bargaining unit at a representation hearing at the Board's Chicago offices. Keating, Castiello, and Tario were also present at the hearing. According to Keating, by the next day it was determined that Stacey should be discharged. Obviously, the General Counsel makes much of this timing. However, on October 20, the day Respondent suspended Stacey, it began marshalling the paperwork to lay the basis for his discharge. Under these circumstances, and applying the *Wright Line* analysis, I think it is clear that Stacey would have been discharged on October 28, even in the absence of his participation in the representation hearing. Because he had already been unlawfully suspended, and because his unlawful discharge was already in motion as of the time he testified at the Board proceeding, I conclude that Stacey's was not discharged because he testified at the representation hearing. Accordingly, this allegation of the complaint should be dismissed.

IV. Conclusions of Law

1. Respondent Parrotkeat Enterprises, Incorporated d/b/a B-G Electronics is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

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reports to his employer. (R. Exh 10). I have considered this ruling, but do not accord its findings much, if any, weight, primarily because it does not appear that the issue of anti-union motivation for Stacey's discharge was considered. In addition, the decision is cursory and appears to have been based on a telephone hearing.

[34]The complaint alleges (paragraph 6(a)) that the disciplinary warnings given to Stacey in conjunction with his suspension and discharge independently violated the Act. The complaint also alleges (paragraph 6(c)), and the General Counsel contends on brief, that Respondent independently violated the Act by terminating Stacey's cell phone account. I do not reach these allegations. Stacey's cell phone account was terminated, and the disciplinary warnings issued, because he was suspended and then discharged. I have found the suspension and discharge unlawful. The remedial requirements of the order I recommend will include a directive to purge Stacey's employment file of references to the suspension and discharge and to reinstate reinstate Stacey's to his prior position, a position that included use of a cell phone. In this context, the allegations of complaint paragraphs 6(a) and (c) do not need to be independently addressed.

2. Charging Party International Brotherhood of Electrical Workers, AFL–CIO, Local Union No. 134 is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by threatening an employee with the loss of customers and closure of the business if employees chose union representation.

4. Respondent violated Section 8(a)(1) of the Act by suggesting to an employee that it would be futile to seek union representation.

5. Respondent violated Section 8(a)(1) of the Act by threatening an employee with unspecified reprisals against another employee for choosing to be represented by a union.

6. Respondent violated Section 8(a)(1) and (3) of the Act by suspending and then discharging employee Bryan Stacey because he engaged in activities in support of union representation and to discourage other employees from engaging in these and other protected activities.

7. The unfair labor practices committed by Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

V. Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having unlawfully suspended employee Bryan Stacey as of October 19, 2005, and then converted the suspension to a discharge as of October 28, 2005, must immediately offer Stacey reinstatement to the position he occupied prior to the suspension, or to an equivalent position, should the prior position not exist, without prejudice to his seniority or any other rights or privileges previously enjoyed. Respondent shall make Stacey whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of his suspension to the date of a proper offer of reinstatement, less any net interim earnings, as prescribed in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Respondent shall remove from its files, including Bryan Stacey's personnel file, any reference to his October 2005 suspension and discharge, and shall thereafter notify Stacey in writing that this has been done and that the suspension and discharge will not be used against him in any way.

Respondent shall post an appropriate informational notice, as described in Appendix A, attached. This notice shall be posted in Respondent's facility or wherever the notices to employees are regularly posted for 60 days without anything covering it up or defacing its contents. When the notice is issued to Respondent, it shall sign it or otherwise notify Region 13 of the National Labor Relations Board what action it will take with respect to this decision.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[35]

[35]If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and

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ORDER

The Respondent, Parrotkeat Enterprises, Incorporated, Schaumburg, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Threatening employees with the loss of customers and closure of the business if the employees choose union representation.

(b) Suggesting to employees that it would be futile to seek union representation.

(c) Threatening employees with reprisals for choosing to be represented by a union.

(d) Suspending or discharging employees because they engage in activities in support of union representation and to discourage employees from engaging in these and other protected activities.

(e) In like and related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer immediate and full reinstatement to employee Bryan Stacey to his former job or, if the position no longer exists, to a substantially equivalent position without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make employee Bryan Stacey whole with interest, in the manner set forth in the remedy section of this Decision and Order for any loss of earnings or other benefits resulting from the suspension and discharge described in this Decision and Order.

(c) Within 14 days from the date of this Order, remove from its files, including Bryan Stacey's personnel file, any reference to his October 2005 suspension and discharge, and three days thereafter notify Bryan Stacey in writing that this has been done and that the suspension and discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) Within 14 days after service by Region 13 of the Board, post at its facility in Schaumburg, Illinois, copies of the attached notice marked "Appendix A"[36] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 7, 2006.

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David I. Goldman
Administrative Law Judge

[36]If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT suspend, discharge, or otherwise discriminate against any of you for supporting the International Brotherhood of Electrical Workers, AFL–CIO, Local Union No. 134 or any other union.

WE WILL NOT threaten that we will lose our customers and have to close the business if employees choose to be represented by a union.

WE WILL NOT suggest that it would be futile to seek union representation.

WE WILL NOT threaten to take reprisals against employees for choosing to be represented by a union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the National Labor Relations Act.

WE WILL offer immediate and full reinstatement to Bryan Stacey to his former job without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Bryan Stacey whole with interest for any loss of earnings or other benefits resulting from our suspension and discharge of him in October 2005.

WE WILL within 14 days from the date of this Order, remove from our files any reference to the unlawful suspension and discharge of Bryan Stacey and WE WILL three days thereafter, notify him in writing that this has been done and that the suspension and discharge will not be used against him in any way.

PARROTKEAT ENTERPRISES, INC.,
d/b/a BG ELECTRONICS

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

209 South LaSalle Street, 9th Floor
Chicago, Illinois 60604
Hours: 8:30 a.m. to 5 p.m.
312-353-7570.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 312-353-7170.